**BEFORE**
**THE PUBLIC SERVICE COMMISSION OF**
**SOUTH CAROLINA**

**DOCKET NO. 2019-290-WS**

**IN RE:**

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| **Application of Blue Granite Water Company for Approval to Adjust Rate Schedules and Increase Rates** | ) | **RESPONSE AND REQUEST THAT ORS MOTION BE DENIED** |

Pursuant to S.C. Code Ann. Regs. 103-829 and applicable South Carolina law, Blue Granite Water Company ("Blue Granite" or the "Company") hereby responds to the Motion for Partial Summary Judgment ("Motion") filed by the S.C. Office of Regulatory Staff ("ORS") on December 20, 2019. The Company requests that the Commission deny the Motion because: (1) summary judgment is not available before the Commission in this proceeding; (2) summary judgment is not available in contested case proceedings; (3) there are pending, disputed issues of fact on which the Motion is based; (4) the Motion conflicts with the Commission's policy favoring collaborative resolution; (5) the Motion is inconsistent with the Administrative Procedures Act; (6) the Motion is contrary to ORS's statutory duty to represent the public interest; and (7) the positions articulated in the Motion are flawed and incorrect.

The ORS Motion is a premature effort to obtain a ruling from the Commission on issues that deserve the type of development that will be provided from the full record that will be presented in this case. The Commission should deny the Motion and address the issues covered by the Motion in its final order.

## I. BACKGROUND

On August 30, 2019, Blue Granite filed a notice of intent to file an application with the Commission seeking adjustments in the Company's rate schedules, and filed such application on October 2, 2019 (the "Application"). Among the changes the Company proposed in its rate

schedules is the addition of annual rate adjustment mechanisms ("Mechanism") intended to track changes in third party purchased water and wastewater service rates. Under the proposal described in the Application and in Mr. DeStefano's pre-filed direct testimony, the Company will annually file for a rate adjustment, the ORS and the Commission will review and audit the rate adjustment filing, the Commission will issue an order on the rate adjustment, the Company will provide notice to its customers of the audited rate adjustment, and the adjustment will then go into effect.

On December 3, 2019, Blue Granite filed with the Commission proofs of publication and certifications of having provided notice of this proceeding to its customers, the general public, and the county and city administrators where Blue Granite provides service. On December 20, 2019, ORS filed the Motion, requesting partial summary judgment regarding the proposed Mechanism. On December 23, 2019, Blue Granite filed a request for a one-week extension to file a response to the Motion. Also on December 23, 2019, a Standing Hearing Officer granted the Company's request in Order No. 2019-148-H, causing the Company's response to be due on January 6, 2020.

## II. RESPONSE

As discussed below, the Motion should be denied on numerous, independent grounds.

### A. Motions for Summary Judgment Are Not Available in This Proceeding.

ORS's Motion should be denied because summary judgment motions are not available before the Commission in the context of this proceeding.

#### i. Summary Judgment Is Not Available In Proceedings Before this Commission.

The S.C. Rules of Civil Procedure ("SCRCP") are incorporated by reference in only three places in the Commission's regulations: S.C. Code Ann. Regs. 103-831 as related to the computation of time, S.C. Code Ann. Regs. 103-832 as related to the service of subpoenas, and S.C. Code Ann. Regs. 103-835 as related to discovery matters not otherwise covered in the

Commission's Regulations. Pre-hearing, hearing, and post-hearing practice are otherwise established by the Commission's Regulations. The Commission could have adopted or modeled its own rules to reflect those of the SCRCP, including the ability to file motions for summary judgment, but it has chosen not to do so, and such an omission must be given effect. *See State v. Ramsey*, 762 S.E.2d 15, 18 (S.C. 2014); 82 C.J.S. Statutes § 478 (2014) ("[W]here a statute contains a given provision, the omission of such a provision from a similar statute concerning a related subject is significant to show that a different intention has existed."). While S.C. Code Ann. Regs. 103-829 generally permits parties to file motions with the Commission, the summary judgment procedures available under Rule 56 in civil proceedings are not authorized or appropriate for proceedings brought under S.C. Code Ann. § 58-5-240.

As the name of the motion implies, summary judgment is a decision that is issued summarily, i.e., without consideration of witness testimony and credibility. *Cf.* SCRCP 56(d) (requiring the court to hold a trial on remaining issues). The statute governing this proceeding—S.C. Code Ann. § 58-5-240—however, precludes the summary dismissal of a component of the utility's proposal. The S.C. Public Service Commission, like other administrative agencies, is "a creature of statute" and therefore possesses "only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged." *Captain's Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 490 (1991). S.C. Code Ann. § 58-5-240 dictates, in clear and unambiguous terms, the procedure that the Commission must follow in evaluating a utility's proposal made under that statute: (1) the utility provides notice of intent to file an application; (2) the utility files the application and associated proposed schedules; (3) the Commission holds a hearing on the utility's proposal; and (4) the Commission issues an order as to the utility's proposal within six months of the date of filing. The statutory language employed

by the General Assembly as to step (3) is "the Commission **shall** . . . hold a public hearing concerning the lawfulness or reasonableness of the proposed changes." S.C. Code Ann. § 58-5-240(B). This mandate—that the Commission hold a hearing on the utility's proposal—precludes the summary denial of any portion of the utility's proposal without giving due regard to witness testimony and credibility. Because summary judgment is not available in this proceeding the Motion must be denied.

**ii. Summary Judgment Is Not Available Because This Is a Contested Case Proceeding, and Granting Summary Judgment Would Deny Blue Granite Due Process.**

ORS's Motion should be denied because this is a contested case proceeding, and granting summary judgment would deny Blue Granite due process. While S.C. Code Ann. § 58-5-240, by its own terms, prohibits the summary dismissal of a component of a base rate application, summary judgment is also not available because this is a contested case proceeding under the Administrative Procedures Act.

Under the Administrative Procedures Act, a "contested case" is defined as "a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." S.C. Code Ann. § 1-23-310(3). As discussed above, this is a ratemaking or price-fixing proceeding in which the Company's rights are required by law to be determined after an opportunity for hearing. In contrasting proceedings before the Public Service Commission with those before the Workers' Compensation Commission, the S.C. Supreme Court has agreed with this view:

> [W]e do not believe nor do Surgery Centers expressly argue that the [Workers' Compensation Commission's] actions involved "ratemaking" or "price fixing" as required by section 1-23-310(3), which defines a "contested case" as "a proceeding including, but not restricted to, ratemaking, price fixing." S.C.Code Ann. § 1-23-

> 310(3) (2005). . . . [U]nlike in public utility or regulated industry cases, there is no such statute in the instant case that clearly creates a requirement for a hearing. *Cf.* S.C. Code Ann. § 58-27-870(A) (Supp.2009) (providing that Public Service Commission "must hold a public hearing concerning the lawfulness or reasonableness of the proposed changes" in electric rates); S.C.Code Ann. § 58-9-540(A) (Supp.2009) (stating Public Service Commission "shall ... hold a hearing concerning the lawfulness or reasonableness of the [telephone utility] rate or rates").

*S.C. Ambulatory Surgery Ctr. Ass'n v. S.C. Workers' Comp. Comm'n*, 389 S.C. 380, 699 S.E.2d 146, 151 (S.C. 2010).

As the S.C. Supreme Court has also found, "[i]f a case is a 'contested case,' an adjudicatory hearing must be held to address issues raised by aggrieved parties." *Stono River Envtl. Prot. Ass'n v. S.C. Dept. of Health & Envtl. Control*, 305 S.C. 90, 92 n.2 (1990) (*Stono River*). The Court further found in the *Stono River* that:

> Administrative agencies are required to meet minimum standards of due process. S.C. Const. Art. 1, § 3: *Smith & Smith, Inc., v. S.C. Public Service Commission*, 271 S.C. 405, 247 S.E.2d 677 (1978). "Due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593 2600, 33 L.Ed.2d 484 (1972). In our view, constitutional due process provisions, apart from the APA, are sufficient to confer the rights to notice and for an opportunity to be heard.

*Stono River*, 305 S.C. 90, 93-94. The S.C. Supreme Court has found that "a full hearing" is necessary where there are contested issues:

> We recognize the wide amount of discretion vested in the Public Service Commission by the legislature. However, in order to insure the wise application of the Commission's authority, a full hearing, where the true facts surrounding the [contested issue] are revealed, is essential. *See* 2 Am.Jur.2d, Administrative Law, Section 397. In *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, 301 U.S. 292, 57 S.Ct. 724, 81 L.Ed. 1093 (1937), Justice Cardozo observed:
>
> "All the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard' . . . of a fair and open hearing be maintained in its integrity . . . The right to such a hearing is one of 'the rudiments of fair play' . . . assured to every litigant by the Fourteenth Amendment as a minimal requirement." 301 U.S. at 304-305, 57 S.Ct. at 730.

*Smith & Smith, Inc. v. S.C. Pub. Serv. Comm'n*, 271 S.C. 405, 407 (1978).

Because this is a contested case as contemplated by the Administrative Procedures Act, components of the utility's base rate case application cannot be summarily dismissed, and therefore ORS's Motion must be denied.

**B. There Are Pending, Disputed Issues of Fact on Which the Motion Is Based.**

Even if Rule 56 SCRCP did apply to this proceeding the Motion should be denied because there are pending, disputed issues of material fact that preclude judgment being granted in favor of the ORS.

"Summary judgment should be granted only where it is perfectly clear that no issue of fact is involved and inquiry into the facts is not desirable to clarify the application of the law." *Fleming v. S.C. Dept. of Corrections*, 952 F.Supp. 283, 286 (S.C. 1996); *see also Evening Post Publ'g Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82 (2011) ("Summary judgment is not appropriate where further inquiry into the facts is desirable to clarify application of the law."). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chemical v. Allianz Underwriters*, 357 S.C. 631, 644 (2004). Under the summary judgment standard, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Id.* Finally, at the summary judgment stage, every benefit of the doubt is given to the party opposing summary judgment, and it is only necessary for the non-moving party to submit a scintilla of evidence warranting determination by the factfinder for summary judgment to be denied. *Evening Post Publ'g Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82 (S.C. 2011).

In this case, as discussed in more detail in Mr. DeStefano's pre-filed direct testimony, numerous assumptions articulated in the Motion are premised upon a flawed, incorrect, and/or

incomplete understanding of various elements of the Company's proposal. In light of ORS's factual misunderstandings or misrepresentations, there are necessarily "issues of fact involved" as related to the proposed Mechanism. For that reason, inquiry into the facts would be desirable, and indeed is necessary, to clarify the application of relevant law. On December 30, 2019, Blue Granite filed 19 pages of direct testimony describing the proposed Mechanism, of which 7 pages were dedicated exclusively to clarifying and correcting factual issues discussed and relied upon in the Motion. Among these are the availability of a hearing as part of the Mechanism implementation procedures, the ability of parties to contest the proposed rate, the matching of the Mechanism to the Company's existing, approved consolidated rate design, how the adjustment is actually calculated and whether it is based on average usage, and how the Mechanism accounts for non-revenue water and inflow and infiltration.

It is clear that the Mechanism is a "live issue" for which an inquiry into the facts and parties' positions is necessary. Further, given the drastic nature of summary judgment as a remedy, summarily dismissing this critical component of the Company's application would unlawfully deprive it of an opportunity to be heard on the underlying factual issues. Given these factual issues, and the legal requirement that all reasonable inferences be viewed in the light most favorable to Blue Granite, ORS's Motion should be denied.

### C. ORS's Motion Conflicts with the Commission's Policy Favoring Collaborative Resolution.

ORS's Motion should be denied because it conflicts with the collaborative process favored by the Commission and endorsed by the General Assembly. The Commission has a well-established policy of favoring the collaborative resolution of issues between parties. As expressed in the Commission's Settlement Policies and Procedures, "[t]he Commission encourages the resolution of matters brought before it through the use of stipulations and settlements."

Commission's Settlement Policies and Procedures § I (June 13, 2006). In addition to this policy, the General Assembly has assigned ORS its own "duty and responsibility" to "act directly or indirectly to resolve disputes and issues involving matters within the jurisdiction of the commission." S.C. Code Ann. § 58-4-50(A)(9).

Proceedings before the Commission, as a matter of course, involve a give and take between what the utility proposes and what other parties, including ORS, believe may lead to a more reasonable result. Indeed, often the parties to a proceeding will cooperatively make changes to the initial proposal to accommodate the concerns of the different parties. In this case, rather than take advantage of this collaborative process in an effort to improve Blue Granite's proposed Mechanism—without warning and without acknowledgment of its very recent assertion that this rate case would be the appropriate forum to implement the Mechanism[1]—ORS filed a motion seeking to reject the Mechanism on an all-or-nothing basis. In order to give the parties an opportunity to identify the points of disagreement between them and to address these points in an equitable manner, ORS's Motion should be denied.

**D. The Motion Seeks Relief That Is Inconsistent with the Administrative Procedures Act.**

ORS's Motion should be denied on the basis that it is inconsistent with the Administrative Procedures Act, because its findings, inferences, and conclusions are arbitrary and capricious[2] in that they directly conflict with ORS's previous positions when the Company filed for approval of the same Mechanism in Docket No. 2018-358-WS. In that proceeding, ORS's position was

[1] "It continues to be ORS's position that the proper implementation of pass-through mechanism would best be handled in the context of the Company's next general rate proceeding." ORS Witness Schellinger Surrebuttal Testimony at 8-9, Docket No. 2018-358-WS (June 12, 2019).

[2] *See* S.C. Code Ann. § 1-23-380(5)(f).

unambiguous that Blue Granite's rate adjustment Mechanism should be considered in this proceeding: "It continues to be ORS's position that the proper implementation of pass-through mechanism would best be handled in the context of the Company's next general rate proceeding." ORS Witness Schellinger Surrebuttal Testimony at 8-9, Docket No. 2018-358-WS (June 12, 2019).

Blue Granite agreed with the position of ORS, withdrawing its filing in that proceeding and instead including the Mechanism as part of this general rate case. However, now that it has done so, ORS has reversed its previous position that "proper implementation of pass-through mechanism would best be handled in the context of the Company's next general rate proceeding," instead arguing that the Commission should summarily reject the Company's proposal without even a hearing on its merits. While this tactic is frustrating from the utility's perspective, it is also, by definition, arbitrary and capricious and therefore violative of the Administrative Procedures Act.

The position taken by the ORS is also arbitrary and capricious because it conflicts with ORS's previous support for the Company's consolidated rate design. The mechanism is consistent with—and is, in fact, embedded within—the Company's previously approved and ORS-supported consolidated rate design.

By way of background, in Docket No. 2014-399-WS, the Company—under its former name of Carolina Water Service ("CWS")—sought authorization to acquire United Utility Companies, Inc., Utilities Services of South Carolina, Inc., and Southland Utilities, Inc. In that docket, ORS anticipated rate consolidation: "When CWS files future rate cases, which ORS anticipates will eventually lead to consolidation of the four (4) companies' current rates into one (1) rate schedule, it should be expected that certain customers may experience different levels of

rate changes depending on which utility was the previous provider." ORS Witness Willie Morgan Direct Testimony at 4, Docket No. 2014-399-WS (Apr. 1, 2015). When the Company filed its rate case application a few months later in Docket No. 2015-199-WS, it proposed two consolidated service territories for water service and a single consolidated service territory for wastewater service. This rate design was supported by ORS and reflected in the Settlement Agreement entered into by ORS, the Company, and Forty Love Point Homeowners Association filed in that docket on November 13, 2015. The Commission expressly approved the new consolidated rate design:

> The Settlement Agreement contemplates a new rate structure. As previously noted herein, this is the first Application from the newly consolidated CWS. In the present case, CWS proposes to merge the four previously approved rate schedules into two–Water Service Territory #1, which encompasses the former CWS and Southland territories, and Water Service Territory #2, encompassing the former USSC and United territories. . . . We conclude the rate design proposed by the Settlement Agreement is reasonable as this rate design fairly distributes the revenue requirement of the Company among the classes of customers.

Order No. 2015-876 at 22-23, Docket No. 2015-199-WS (Dec. 22, 2015). The consolidated rate design, which was supported by ORS and approved by the Commission, spreads third party charges across Blue Granite's service territories rather than assigning these charges to one of the 41 water systems or 9 wastewater systems that happens to be located near the third-party provider.

In another example of its recognition of the benefits of a consolidated rate design, ORS recently recommended the consolidation of rates for Synergy Utilities, filing testimony concluding that rate consolidation "would be in the public interest as a single-tariff rate structure lowers administrative costs, improves service affordability for customers and promotes ratepayer equity . . . . The ORS recommendation to merge the Company's rate schedules into a single tariff rate structure will result in just, reasonable, sufficient, and nondiscriminatory rates for all of the

customers of Synergy."[3] For ORS to suddenly reverse its position as to the Blue Granite's consolidated rate design and argue that the Mechanism should somehow directly assign costs in spite of the Company's approved rate design is arbitrary and capricious.

**E. The Motion is contrary to ORS's statutory duty to represent the public interest.**

S.C. Code Ann. § 58-4-10 requires ORS to "represent the public interest of South Carolina before the commission," and the General Assembly included in the definition of "public interest" not only the concerns of the using and consuming public, but also the "preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services." S.C. Code Ann. § 58-4-10(B). ORS's proposed wholesale rejection of the Company's Mechanism as contemplated by the Motion is contrary and antagonistic to ORS's duty to ensure the "preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high-quality utility services."

As discussed in Mr. DeStefano's pre-filed direct testimony, the associated third-party costs are significant and have significantly outpaced what the Company's rates currently provide recovery for. The Company's actual purchased water expenses are approximately 45% higher than what is currently approved in base rates for recovery, and the Company's actual wastewater treatment expenses are 228% higher than what is currently approved in base rates for recovery, and the adjusted estimated total is 353% higher than what is currently approved in base rates for recovery. In this rate case alone, these third-party costs represent over 40% of the costs the Company seeks to recover, which are costs that must be carried by the Company without markup or margin, thus restricting its capital. According to Mr. DeStefano:

[3] Direct Testimony of ORS Witness Matthew Schellinger at 13-14, Docket No. 2017-28-S (Apr. 2, 2018).

> The burden of carrying increases in purchased service expenses impairs the Company's liquidity and ability to focus capital on actual projects that benefit customers. In light of the magnitude of these expenses and the burden on the Company of carrying such cost increases on its balance sheet between rate cases, the implementation of the pass-through mechanisms is essential to enabling the needed, continued investment in and maintenance of Blue Granite's facilities and its provision of reliable and high quality utility services.

DeStefano Direct Testimony at 27, Docket No. 2019-290-WS (Dec. 30, 2019). The General Assembly has statutorily required ORS to maintain a balanced perspective that recognizes that "reliable and high-quality utility services" cannot be provided without continued investment. Absent such a balanced perspective, the just and fair carrying out of rate application proceedings is at substantial risk. ORS's proposed wholesale rejection of the Mechanism fails to take into account the Company's burden in carrying these costs and the need for the Company to focus capital on actual projects that benefit customers. For these reasons, ORS's Motion should be denied.

**F. The Positions Articulated in the Motion Are Flawed and Incorrect.**

ORS's Motion should also be denied because the positions articulated in the Motion are flawed and incorrect.

**i. The Mechanism results in just and reasonable rates.**

Contrary to ORS's argument, the pass-through Mechanism proposed by the Company does, in fact, result in just and reasonable rates. As discussed at length above, the Mechanism is embedded within the consolidated rate design supported by ORS and previously approved by the Commission. ORS's attack, therefore, on the rate design implementing the Company's rates, including those resulting from the Mechanism, is absurd and should be rejected. ORS has routinely supported consolidated rates, and the Commission has agreed that Blue Granite's consolidated rates are good for customers: "We conclude the rate design proposed by the Settlement Agreement is reasonable as this rate design fairly distributes the revenue requirement of the Company among

the classes of customers." Order No. 2015-876 at 22-23, Docket No. 2015-199-WS (Dec. 22, 2015). The consolidated rate design spreads third party charges across the service territories rather than assigning these charges to the particular system that happens to be located near the third-party provider. As recently articulated by ORS, a consolidated design "result[s] in just, reasonable, sufficient, and nondiscriminatory rates" for all customers.[4] ORS's position that the Mechanism as implemented through the Company's approved consolidated rate design somehow results in rates that are not just and reasonable should be rejected.

**ii. The Mechanism results in predictable and transparent rates.**

ORS argues that the Mechanism produces "unpredictable and complicated rates," supporting this position solely by referring to the use of an average customer consumption figure in the rate calculation. First, the Mechanism is wholly more predictable than the current system of Blue Granite incorporating changes in third party rates by filing for a rate case. The procedure proposed by the Company contemplates a regular, predictable annual proceeding in which purchased water and wastewater rates are updated to reflect actual costs incurred. This procedure could not be more predictable. In fact, the procedure proposed by the Company is more predictable than other water and wastewater utilities in South Carolina with a pass-through mechanism, who file with the Commission whenever a purchased service provider happens to change its rate. *See, e.g.*, Notification of Rate Increase, Synergy Utilities, LP, Docket No. 2017-28-S (January 28, 2019) (providing "notice" to the Commission of a third-party rate increase that was immediately passed through to customers by the utility). The proposed procedure is also more predictable than the previous pass-through mechanism approved by the Commission for the Company, which also

[4] Direct Testimony of ORS Witness Matthew Schellinger at 13-14, Docket No. 2017-28-S (Apr. 2, 2018).

varied monthly based upon changes in purchased service provider rates. *See* CWS Witness Cartin Direct Testimony at 8, Docket No. 2015-199-WS ("A pass-through customer's commodity charge (the rate charged per 1,000 gal.) fluctuates each month . . . . These varying rates can be a source of confusion to our customers and present an administrative challenge to our billing department.").

Second, the use of an average consumption figure is merely a function of Blue Granite's proposed calculation for the resulting rate. Because the rate should be based actual customer consumption, but must also be applied on a customer-by-customer basis, average consumption is simply used as a way to display the ultimate rate to be implemented. Once the applicable rate group's rate has been calculated, each customer's actual charge is calculated based on the customer's actual usage. This is described in more detail in Mr. DeStefano's direct testimony and is supported by DeStefano Direct Exhibit No. 2. The procedure proposed by the Company is eminently transparent, is based on actual customer usage, and will be readily subject to audit by ORS.

**iii. The Mechanism does not "fail[] to incentivize the Company to minimize non-revenue water and [inflow and infiltration]."**

ORS is flat wrong that the Mechanism does not provide incentive for the Company to minimize non-revenue water and inflow and infiltration ("I&I"). In reality, as discussed in Mr. DeStefano's testimony, the annual rate adjustment Mechanism proposed by the Company permits the Commission to set an authorized level of water loss and I&I, beyond which the Company would absorb any losses. For example, the Commission could set a water loss threshold for a particular provider, and any water loss beyond that threshold would count against the Company's purchased water and wastewater expense and would not be able to be recovered in the deferral or rate reconciliation process. Since the Application was filed in this proceeding, the Company has responded to hundreds of individual information requests from ORS and produced thousands of

megabytes of data. ORS has been provided sufficient information to propose appropriate volumes and rates to be recovered for costs from third party providers. Despite the Company's willingness to account for non-revenue water and I&I within the proposed Mechanism, it is aware of no other water or wastewater utility that implements a pass-through mechanism that is required to, in any way, adjust their pass-through rates to account for water loss and I&I.

**iv. The Mechanism does not impair the regulatory authority of the Commission.**

While ORS states on page 1, footnote 1 of its Motion that it does not object to the mechanism implemented by Ocean Lakes Utilities, L.P. by which it passes through to customers changes in wholesale wastewater rates charged by its third party service provider,[5] ORS later in the Motion argues that such an arrangement would take away the Commission's regulatory authority. This position is, of course, untenable. While other water and wastewater utilities are apparently permitted to simply file notice with the Commission before implementing third party changes in rates, as discussed above, Blue Granite has proposed a carefully regulated process by which any change in third party rates would be (1) filed by the Company with the Commission; (2) audited by ORS and the Commission; (3) subject to Order by the Commission; and (4) noticed to customers before being implemented. This procedure affords even greater regulatory protections than the mechanisms and procedures already authorized for other water and wastewater utilities by the Commission.

**v. The Mechanism provides for more-than-adequate review.**

ORS argues that the proposed procedure for implementing the Mechanism "fails to afford parties the opportunity to be heard." The Company has clarified in Mr. DeStefano's testimony that it would be open to including an opportunity for a hearing as part of the pass-through

[5] Order No. 2014-48 at 2, Docket No. 2013-380-S (Jan. 14, 2014).

procedure. However, the Company is aware of no other water or wastewater utility with a pass-through mechanism that has been required to include as part of their implementation procedure a hearing. For that reason alone, it would be unduly discriminatory and an abuse of discretion for a hearing to be a condition of implementing third party rate changes. In addition, as discussed in Mr. DeStefano's testimony, one of the primary purposes of the Mechanism is to reduce administrative burden, for the Company, ORS, and for the Commission, which reduces regulatory costs for customers and frees up the Commission's resources. The Company also believes that there would be little to gain from a hearing on a mechanism that simply passes through third party costs, and which was authorized and established authorized rate and consumption levels during a thoroughly vetted and noticed base rate proceeding. In spite of these reservations, and in the spirit of cooperation, the Company is amenable to including notice and an opportunity for a hearing as part of the pass-through mechanism procedures if the Commission believes that it is appropriate.

**vi. The Mechanism does not constitute ratemaking.**

While ORS argues that the mechanism "constitutes ratemaking and violates S.C. Code Ann. § 58-5-240(G)," the Commission recently found exactly to the contrary. In Docket No. 2018-358-WS, the docket in which the Company previously proposed the Mechanism (and the docket in which ORS proposed that the Mechanism be addressed in this rate case), the Company sought clarification as to whether the Mechanism resulted in "changes to its entire rate structure and its overall rate of return." In Order No. 2019-367, the Commission found that they did not. This is so because, while changes to the entire rate structure and rate of return would require a full rate case—such as the instant proceeding—the Mechanism serves only to adjust an isolated charge based solely upon changes in third party rates. As discussed in Mr. DeStefano's testimony, the mechanism would not adjust the Company's rate of return, rate structure, or any of the twenty-

eight basic facilities charges, four water commodity charges, or any of the non-recurring charges. Contrary to ORS's assertion, the mechanism *does not* require an annual review of the Company's cost allocation practices. To the contrary, just like the myriad pass-through mechanisms implemented by a host of other water and wastewater utilities in South Carolina, Blue Granite's proposed Mechanism would simply pass through to customers the impact of changes in third party service providers' rates.

## III. CONCLUSION

The Company requests that the Commission deny the Motion because: (1) summary judgment is not available before the Commission in the context of this proceeding; (2) summary judgment is not available in contested case proceedings; (3) there are pending, disputed issues of fact on which the Motion is based; (4) the Motion conflicts with the Commission's policy favoring collaborative resolution; (5) the Motion is inconsistent with the Administrative Procedures Act; (6) the Motion is contrary to ORS's statutory duty to represent the public interest; and (7) the positions articulated in the Motion are flawed and incorrect.

WHEREFORE, Blue Granite moves the Commission to deny ORS's Motion, and requests such other relief as the Commission deems just and proper.

Respectfully submitted,

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